IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

MISC. CIVIL APPLICATION NO. 79 OF 2006

Hiralal G. Kukreja .. Applicant

versus

Mohanlal G. Kukreja .. Respondent

...

Mr.U.J. Makhija i/b M.R. Patil for the applicant.

Mr.J.B. Patel for respondent no.3.

CORAM : D.G. KARNIK, J

DATED : 28th August 2006.

P.C.:

1. By this petition under section 24 of the Code of Civil Procedure, petitioner seeks an order from this court transferring S.C. Suit no.4315 of 1998 pending in the City Civil Court, Mumbai to this Court for being heard and tried with Original Suit no.2623 of 1993 pending in this Court.

2. Petitioner has filed the suit, bearing Civil Suit no.2623 of 1993, in this Court claiming that he has 15% share in the suit property and has prayed for a decree for partition. S.C. Suit no.4315 of 1998 has been filed by the respondent no.1 against the plaintiff and another in the City Civil Court, Mumbai for specific performance of an agreement of sale dated 30th June 1982 of the suit property.

3. In my view, the two suits involve two different causes of action. The suit of the petitioner is for partition claiming separate share in the property whereas suit of respondent no.1 is for specific performance of an agreement for sale. The evidence in both the suit is likely to be different. In the suit of the respondent, he would be pleading and proving his agreement for sale whereas in the suit of the petitioner, he would be only proving that he has a share in the property and is entitled for a decree of partition. In the circumstances, I see no reason to transfer the suit pending in the City Civil Court to this Court.

4. Learned counsel for the petitioner however

submitted that common issues would arise in the two suits. I do not, prima facie, see any common issue arising in the two suits. However, if common issues arise, the plaintiff would be at liberty to pray for a stay of the latter suit u/s.10 of the Code of Civil Procedure.

5. In the circumstances, there is no merit in the application which is hereby dismissed summarily.

(D.G. KARNIK, J)